

RUSSO, KEANE & TONER, LLP

ATTORNEYS AT LAW
33 WHITEHALL STREET
NEW YORK, NEW YORK 10004

(212) 482-0001
FAX (212) 482-0002
WWW.RKTLAW.COM

THOMAS F. KEANE
ALAN RUSSO^{*}
STEPHEN B. TONER^{**}
FERN FLOMENHAFT[†]
KEVIN G. HORBATIUK
CLAIRE F. RUSH
CHRISTOPHER G. KEANE
DAVID S. GOULD

OF COUNSEL:
SUSAN KEANE
FRANCESCA A. SABBATINO

^{*}ALSO ADMITTED IN NEW JERSEY
[†]ALSO ADMITTED IN CONNECTICUT
^{**}ALSO ADMITTED IN MASSACHUSETTS

JOHN J. KOMAR
THERESA VILLANI
DENISE M. BUSH^{*}
BRENDA R. HALL
JOSEFINA A. BELMONTE
MICHAEL J. SWEENEY^{*}
MARIE A. CASTRONUOVO
MATTHEW P. MAZZOLA
LEE-DAVID WEINER
TINA ALTINEL PROFITA
JOHN A. CORRING
GAVIN G. REYNOLDS
H. DEVRIM ELCI^{*}

July 8, 2009

VIA ECF

Honorable Arthur D. Spatt
United States District Court
Eastern District of New York
United States Courthouse
1020 Federal Plaza - P.O. Box 9014
Central Islip, New York 11722-9014

Re: Life Insurance Company of North America v. Richard Ognibene and
Michael Bailey, as Administrator of the Estate of Judith Bailey
Civil Action Number: 08 CV 1150

Dear Judge Spatt,

We represent the Life Insurance Company of North America ("LINA") in the above referenced matter. We are writing to explain our Nunc Pro Tunc filing of the Certification of Service, certifying the service, on March 20, 2008, of the Summons and Complaint in this matter on Brian M. Hussey, Attorney for the Defendant Michael Bailey, as Administrator of the Estate of Judith Bailey.

As you know, this action, which is closed, involves an interpleader initiated by plaintiff LINA, to determine the beneficiary entitled to the \$848,000 in proceeds payable under the Basic and Supplemental Life Insurance Policies issued to Judith Bailey.

In January of 2008, we sent a letter to Joseph Canzoneri of Canzoneri & Canzoneri, LLP., attorney for Michael Bailey, as Administrator of the Estate of Judith Bailey, informing him that we would be filing an interpleader action against his client and asking whether he would accept service. Mr. Canzoneri informed me that he was not admitted to Federal Court and therefore his

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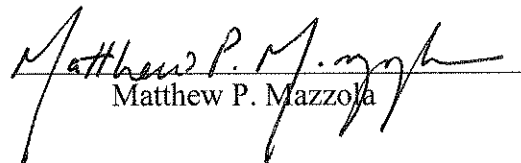
client was retaining the services of Brian M. Hussey, Esq. In the emails attached, as Exhibit "A", I contacted Mr. Hussey, who was retained by Michael Bailey, as Administrator of the Estate of Judith Bailey, to determine whether he would accept service of the Summons and Complaint. On February 26, 2008, Brian M. Hussey emailed me the following acceptance of service via mail, "... I will accept papers by mail and sign the federal acknowledgment form." (Exhibit "A"). Furthermore, in an email from Mr. Hussey dated March 3, 2008, also annexed hereto, he forwarded me his address, so that I could serve him the Summons and Complaint via regular mail. (Exhibit "A"). I served said Summons and Complaint on Mr. Hussey via regular mail on March 20, 2008.

However, prior to me filing the Certification of Service, I advised the Court that this matter was settled based on representations from John Servider, Esq, former counsel for Richard Ognibene, and, Mr. Brian M. Hussey, Esq, counsel for Michael Bailey, as administrator of the Estate of Judith Bailey. On June 4, 2008, the Court closed this matter pending submission of the settlement papers. At the time the matter was closed I had still inadvertently failed to file the Certification of Service as Mr. Hussey represented to me that the parties were in the midst of a settlement.

After being informed that the parties had reached a settlement, I informed both Mr. Hussey and Mr. Servider that I would draft the release for this matter if they would merely provide me with the terms of the settlement agreement. I maintained frequent communication with Mr. Servider regarding this matter, but I was not able to get in touch with Mr. Hussey. I sent Mr. Hussey several emails to the address he provided and had responded from in the past, I have called him on several occasions from a number provided by Mr. Servider's Office and sent several letters, however Mr. Hussey had not attempted to respond to my communications, nor had he attempted to contact me at all. Mr. Hussey's behavior in refusing to return my communications led me to believe that his position on settlement has changed. Accordingly, LINA along with new counsel for Richard Ognibene, Norris Wolf, Esq., filed a joint motion requesting that the Court reopen this matter. The Court reopened this matter on April 6, 2009. This was approximately 10 months after the case was closed and over a year after Mr. Hussey agreed to accept service via mail on behalf of Michael Bailey, as Administrator of Judith Bailey. Regrettably, until today I inadvertently failed to file the Certification of Service.

Accordingly, today I am filing the Certification of Service Nunc Pro Tunc.

Very truly yours,
RUSSO, KEANE & TONER, LLP


Matthew P. Mazzola

RUSSO, KEANE & TONER

cc: *Via Regular Mail*

Kleinberg, Kaplan, Wolff & Cohen, P.C.
Attorney for Codefendant Richard Ognibene
551 Fifth Avenue
New York, New York 10176
Attn: Norris D. Wolff, Esq.

Brian M. Hussey, Esq.
Attorney for Codefendant Michael Bailey,
as Administrator of Judith Bailey
2929 Kinloch Road
Wantagh, New York 11793- 1713
Attn: Brian M. Hussey